IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPLICATION NO.55 OF 2000

The Bombay Dyeing & Mfg.Co.Ltd. .. Applicant
V/s
The Commissioner of Central Excise .. Respondent

Mr.M.H.Patil for the Applicant.
Mr.Y.S.Bhate for the Respondent.

CORAM: S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 09.02.2005.

P.C.:

1. Heard the learned Counsel for the parties. The learned Counsel fo the Applicant has submitted that the CEGAT ought not to have gone into the merits of the matter when the Appeal which was filed by the Applicant before the Commissioner (Appeals) was dismissed on the ground of non-deposit. In support of his contention, the learned Counsel for the Applicant has brought to our notice the judgment of the Supreme Court in the case of **CCE, Chandigarh V/s Smithkline Beecham Co.Health C.Ltd.- 2003 (157) ELT 497 (SC)**, wherein the Supreme Court has clearly held that when the Appeal is dismissed by the Commissioner (Appeals) for non-deposit, the Tribunal should not consider the matter on merits.

2. Under the aforesaid facts and circumstances, we quash and set aside the order of CEGAT dated 8th June, 2000. The learned Counsel for the Applicant states that the requisite pre-deposit amount has already been deposited by the Applicant. Hence, the Appeal before the Commissioner (Appeals) stands restored. The

Commissioner (Appeals) shall hear the said Appeal strictly on its own merits.

3. Application stands disposed of in the above terms.

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